
Ratio Legis for The Establishment of a State Audit Board

Listia Rahmawati Bumulo¹

¹ Faculty of Law, Gorontalo State University, Indonesia. E-mail: listiabumulo12@gmail.com

ARTICLE INFO

Keywords :

Authority; Government, Ideal.

How To Cite :

Bumulo, L.R., (2020). Ratio Legis For The Establishment Of a State Audit Board. *Estudiante Law Journal*. Vol. 2 (1): 138-152

DOI :

ABSTRACT

The purpose of this study is to find out the ratio legis or the history of the establishment and development of the BPK. The method used in this research was normative research and the type of approach used was the statute approach, conceptual approach, and case approach. Legal material analysis techniques in this research used a systematic interpretation method. The results of the study showed that the importance of regulation related to financial matters and the State Audit Board has been realized by the nation's founders since the beginning of independence. At the beginning of the establishment of the State Audit Board, this institution still used the laws and regulations of the Dutch East Indies which became the legal basis for carrying out the duties of the Algemeene Rekenkame, namely ICW and IAR. However, as the government process in Indonesia progresses, the government also designs and establishes regulations related to the State Audit Board. The more updated and strengthened regulations related to the BPK were because the management of state finances is very important and is the most basic thing in realizing a clean government. The government should also expand and provide full support to BPK to make policy regulations that support the optimization of BPK's role as an independent institution so that BPK has more flexibility and authority to be able to realize its control function.

@2020 Bumulo, L.R.,
Under the license CC BY-SA 4.0

1. Introduction

A. Background

The main role of the state in a country is to realize the ideals of the nation itself which is contained in each constitution or the constitution of the country concerned.¹ The ideals of the Indonesian nation as stated in the 1945 Constitution as the basis for the Constitution of the Republic of Indonesia², both before and after the amendment, have a strong spirit for the welfare of citizens and form a welfare state.³ Article 33 of the 1945 Constitution places the role of the state in a very strategic position to structure the economy and control important production branches, as well as to guarantee people's wealth based on economic democracy.⁴

The role of the state in this case the government as the manager of state finances allocates state finances for the prosperity of all citizens. as regulated in Article 23 paragraph (1) of the 1945 Constitution which states that the State Revenue and Expenditure Budget as a manifestation of the management of State finances is stipulated annually by law and carried out openly and responsibly for the prosperity of the people.⁵ State finances that are managed must be controlled so that their use can be directed within the specified period. Control is the responsibility of the government so that there are no deviations or misuse of state finances carried out by irresponsible parties.⁶

The management of state finances must be implemented or carried out openly and responsibly. Based on the general provisions of Law Number 17 of 2003 concerning State Finance where it is stated that one of the concrete efforts to realize transparency and accountability in the management of state finances is the submission of government financial accountability reports that meet the principles on time and are prepared under government accounting standards that have been accepted generally.⁷ To accommodate this constitutional mandate, the Government of Indonesia established the State Audit Board of the Republic of Indonesia to be the front line in controlling the course of state

¹ Ahmad, Ahmad, and Novendri M. Nggilu. "Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution." *Jurnal Konstitusi* 16.4 (2020): 785-808.

² Ahmad, Ahmad. "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945." *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 5.2 (2021).

³ An handrawulan, *Hukum Perusahaan Multinasional, Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*. (Bandung: CV. Pustaka Media, 2011), 15.

⁴Lihat Pasal 33 UUD 1945

⁵Lihat Pasal 23 ayat (1) UUD 1945

⁶ Agung Gumilang Saragih. 2019. Skripsi: *Kepastian Hukum Relasi Kewenangan BPK dan BPKP dalam Menentukan Kerugian Keuangan Negara*. Sumut: Universitas Muhammadiyah Sumatera Utara, 1.

⁷Sahya Anggara. *Administrasi Keuangan Negara*. (Bandung: CV. Pustaka Setia, 2016), 27.

finances and eliminating the possibility of corruption.⁸

The initial concept of BPK emerged during the discussion of the Constitution conducted by the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI).⁹ Based on the 1945 Constitution Article 23E paragraph (1), BPK is an institution established under the constitution which is tasked to carry out an audit on the management and accountability of state finances freely and independently.¹⁰ The results of the state financial audit are then submitted to a representative institution under their authority based on Article 23E paragraph (2) and the results of the BPK audit are followed up by the institution and/or agency that manages state finances under the law, as stated in Article 23E paragraph (3).¹¹ This audit of the management of financial accountability needs to be carried out so that each party who manages state finances will carry out the mandate in the best possible way. Those who manage state finances must realize that they cannot use the money entrusted by the people irresponsibly.¹²

The audits conducted by the BPK are closely related to realizing the achievement of a clean government. A clean government is a government whose development priority is more directed at improving performance so that the government can create and improve the quality of services to the community and reduce the level of abuse of authority within the government apparatus. In terms of preventing Corruption, Collusion, and Nepotism, BPK plays a very important role. The presence of BPK is highly expected to maintain transparency and accountability of state finances considering that responsible management of state finances is a prerequisite for economic health and national development. Transparency and accountability of state finances make it easier for the government to find out each of its financial conditions so that it can plan development funding and monitor its implementation properly.¹³

B. Problem Formulation

In this study, the author formulated the problem of how the Ratio Legis for the Establishment of the State Audit Board is.

C. Research Method

⁸Beni Kurnia Ilahi dan Muhammad Ikhsan Alia. (2017). *Pertanggungjawaban Pengelolaan Keuangan Negara Melalui Kerja Sama BPK dan KPK*. Jurnal Integritas. 3 (2), 37-38.

⁹ Wantu, Fence M. "Mekanisme Koordinasi dan Sinkronisasi Lembaga Kementerian Negara: Suatu Praksis Menuju Kabinet Yang Efektif." *Al Ahkam* 15.2 (2019): 76.

¹⁰Lihat Pasal 23E ayat (1) UUD 1945

¹¹ Siaran Pers BPK, "BPK Terima Konsultasi dari Pansus Hak Angket DPR tentang KPK" (<https://www.bpk.go.id/news/bpk-terima-konsultasi-dari-pansus-hak-angket-dpr-tentangkpk-Berdasarkan-UUD-194-Pasal-23E,negara-secara-bebas-dan-mandiri>, Diakses pada 07 Maret 2021, 02:05)

¹² Badan Pemeriksa Keuangan RI. *Mengenal Lebih Dekat BPK*. (Jakarta: Biro Humas dan Kerja Sama Internasional Badan Pemeriksa Keuangan RI, 2019), 28

¹³Hendra Karianga. *Politik Hukum Dalam Pengelolaan Keuangan Daerah*. (Jakarta: PT. Kencana, 2013), 288.

The type of research used in this research was normative which was focused on examining the application of the rules or norms in the applicable positive law, which was then linked to the central issue discussed in this study. The approach used in this research consisted of a statute approach and a conceptual approach. The legal material analysis techniques in this study used a systematic interpretation method.¹⁴

2. DISCUSSION

Ratio Legis of the Establishment of the State Audit Board

1. Beginning of Independence 1945

The importance of regulating state finances has been realized by the nation's founders since the beginning of independence.¹⁵ We can see this in the 1945 Constitution which was ratified on August 18th, 1945. Chapter VIII Article 23 contains provisions for the management of state finances which were relatively complete at that time, starting from the regulation of the state budget of revenues and expenditures, taxation, currency, to the regulation of the state audit board.¹⁶ To support good management of state finances, the Indonesian government has established an institution authorized to conduct financial audits.

Proposals related to the need for BPK, among others, came from Dr. Samsi, Woerjaningrat, Dr. Radjiman Wedyodiningrat, Pratalykruma, Maria Ulfah, and Dasaad. As was known, since the Dutch government, there has also been a BPK, better known as *Algemeene Rekenkamer*. In the subcommittee established to prepare the Draft Constitution, Moh. Hatta, who was asked to prepare a draft on finances, has included the existence of the State Audit Board. The proposal of Moh. Hatta who became a member of the Constitution Drafting Committee led by Ir. Soekarno is as follows:¹⁷

- 1) The financial year runs from April 1st of each year to March 31st of the following year. The draft state budget for the further year is submitted to the People's Council no later than a month before the start of the next financial year. The budget is determined by law.
- 2) All taxes for state purposes are based on law.
- 3) Tax loans for state needs may only be made with the consensus of the People's Council. All state agreements with the leader will be borne by the state.
- 4) The types and prices of currencies are determined by law. The government has

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media Group, 2014), 93

¹⁵ Mahkamah Konstitusi RI. *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), 11.

¹⁶ Alfin Sulaiman. *Keuangan Negara Pada BUMN Dalam Perspektif Ilmu Hukum*. (Bandung: PT. Alumni, 2013), 28.

¹⁷ Baharuddin Aritonang. *Op.Cit.*, 24

the right to make metal.

- 5) State financial matters shall be further stipulated by law.
- 6) To audit the accountability for state finances, a state audit board is established whose regulations are stipulated by law.¹⁸

In the continuation of the discussion on the Draft Constitution at the meeting on July 15th, 1945, related to the establishment of State Audit Board was also proposed by Dr. Soepomo, requested by Ir. Soekarno to report on the Draft Constitution which had been completed. At the meeting, Dr. Soepomo said that regarding this finance, there should also be basic points written in the Constitution, namely in Article 23 paragraph (1) which reads: "*The income and expenditure budget is determined annually by law*".

Based on a series of proposals for the establishment of the BPK, the PPKI (The Preparatory Committee for Indonesian Independence) decided on the 1945 Constitution on August 18th, 1945, including the existence of the BPK through Article 23 paragraph (5). Although its existence has been stipulated in the 1945 Constitution, the BPK was not immediately established. The uncertain state of the state has led to the fate of the BPK, like other state institutions, that have not been operating effectively. The establishment of the BPK was based on the Government Determination Letter Number 11/OEM, on December 28th, 1946. After the stipulation of this matter, the BPK was officially established on January 1st, 1947, whose temporary position was in the Magelang city. At that time, the BPK only had 9 employees, and the first Chairman of the BPK was R. Soerasno. To begin its duties, BPK with its letter dated April 12th, 1947 Number 94-1 has announced to all agencies in the territory of the Republic of Indonesia regarding its duties and obligations in auditing the accountability of state finances.¹⁹

For the time being, the BPK was still using the Dutch East Indies laws and regulations which became the legal basis for carrying out the duties of the *Algemene Rekenkamer* (Dutch East Indies BPK), namely *Indische Comptabiliteits Wet* (ICW) and *Instructie en verdere bepalingen voor de Algemeene Rekenkamer* (IAR).²⁰ A year later, based on Government Decree Number 6/1948 dated November 6th, 1948, the domicile of BPK was moved from Magelang to Yogyakarta. The transfer was not separated after the transfer of the capital city of Indonesia from Jakarta to Yogyakarta. The Republic of Indonesia, whose capital city was Yogyakarta, still has a State Audit Board under Article 23 Paragraph (5) of the 1945 Constitution.

2. Era of the 1949 RIS (Republic of the United States of Indonesia) Constitution

The Republic of the United States of Indonesia was established based on the RIS

¹⁸Baharuddin Aritonang. *Op.Cit.*, 25

¹⁹BPK RI, "*Sejarah BPK RI Sejak 1 Januari 1947*", (<https://www.bpk.go.id/menu/sejarah>, Diakses Pada 08 Oktober 2021, 00:50)

²⁰Mahkamah Konstitusi RI. *Op.Cit.*, 27.

Constitution on December 14th, 1949. In line with the establishment of the RIS based on the Constitutional Charter of the RIS on December 14th, 1949, the BPK's institutionalization also changed. With the enactment of the RIS Constitution, the Financial Supervisory Board (DPK) was established which was one of the tools of the RIS state and as chairman was appointed R. Soerasno starting December 31st, 1949, who previously served as chairman of the BPK in Yogyakarta. DPK RIS based in Bogor occupied the former office of Algemene Rekenkamer during the government of the Netherland Indies Civil Administration (NICA).²¹

The regulation of DPK in the RIS Constitution is regulated in articles 115 and 116. Both articles emphasize the existence of BPK as well as the appointment and dismissal of the Chairman, Vice-Chairman, and Members of the Financial Supervisory Board carried out by the president. Changes related to the provisions of this DPK did not change much from before because the RIS Constitution was only valid for a short period of eight months.²²

3. Era of 1950 Provisional Constitution (UUDS)

On August 17th, 1950, Indonesia again became the Unitary State of the Republic of Indonesia (NKRI) based on the 1950 Provisional Constitution. In this era, the name DPK was still used according to the 1950 Provisional Constitution. Its position remained in Bogor, occupying the former office of the RIS Financial Supervisory Board.²³ In the 1950 Provisional Constitution, the functions and authorities related to the DPK as well as the appointment and dismissal of the Chairman, Vice-Chairman, and their members were still the same as those stipulated in the RIS Constitution. Then in the 1950 Provisional Constitution, there was an addition to the provisions related to DPK where all results of supervision and audit must be notified to the DPR (House of Representatives) as well as state expenditures and revenues must be accounted for and submitted to the DPR. Although BPK changed its name to the Financial Supervisory Board based on the RIS Constitution and the 1950 Provisional Constitution, then it returned to being BPK based on the 1945 Constitution.

The workings of the Financial Supervisory Board have not changed much, almost the same as *Algemeene Rekenkamer* because the basis is the same, namely ICW and IAR. In line with these constitutional obligations, DPK annually compiles Reports related to DPK. The reporting period is from January 1st to December 31st which is closed on March 31st of the following year. The material report in 1951, for example, started from Chapter I of the General Section on the position and duties of the Financial Supervisory Board.

²¹Wahyu Djaja. *Republik Indonesia Serikat*. (Klaten: Cempaka Putih, 2018), 30.

²²Konstitusi Republik Indonesia Serikat Keputusan Pres. RIS 31 Januari 1950

²³BPK RI, "Sejarah BPK RI Sejak 1 Januari 1947", (<https://www.bpk.go.id/menu/sejarah>, Diakses pada 14 Oktober 2021, 10:22)

Technically, the implementation of the management and accountability of state finances remained based on the colonial heritage laws and regulations. Its main functions are audit, recommendation, and *comptable* court.

4. Era of Enforcement of the 1945 Constitution After Presidential Decree on July 5th, 1959

In the next phase of the journey, after the issuance of the Decree of the President of the Republic of Indonesia on July 5th, 1959, it was confirmed that the constitution returned to the 1945 Constitution which automatically eliminated the existence of the Financial Supervisory Board.²⁴ However, in this case, the position of BPK has not strengthened because the implementing law has not changed. After several years later, the government enacted a PERPPU (Government Regulation in place of Law) concerning BPK, namely PERPPU Number 7 of 1963 concerning BPK. The PERPPU was determined by considering several things related to BPK so that in the future BPK would be more assertive and further strengthen its position and authority to be more effective in carrying out its duties. In this PERPPU, there were 13 members of the BPK who were appointed by the president for a term of office of 5 years. The authorities and duties of the BPK in this PERPPU have not changed much from the previous law.²⁵

Then the government again issued a PERPPU on BPK, namely PERPPU Number 6 of 1964. This PERPPU revoked PERPPU Number 7 of 1963 concerning the BPK, this was done to complete the PERPPU. In this PERPPU, more emphasis is placed on all BPK policies related to the duties of authority and requirements for the appointment of BPK members. Different from the previous PERPPU, in this PERPPU the government increased the number of BPK members to 16 people who were appointed by the president and had fulfilled all the requirements that had been set.²⁶ Then in this PERPPU, the duties of the BPK is still the same, namely conducting audit and reporting all activities resulting from the audit to the DPR through the President. Regarding the authority of the BPK as regulated in this PERPPU, there is no change in which every agency, company, and bank is required to comply with BPK's request to provide information related to the fulfillment of the duties of the BPK. As the party issuing the policy, the Government must be able to see the balance in social life.²⁷ The results of policies issued by the Government are solely derived from the wishes of the people.²⁸

²⁴Fakhris Lutfianto Hapsoro, (2020). Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution, *Jurnal Law Review*. 2 (2), 144

²⁵Lihat PERPPU No. 7 Tahun 1963 Tentang BPK

²⁶Lihat PERPPU No. 6 Tahun 1964 Tentang BPK

²⁷Elfrida Ratnawati, (2021). *The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia*. *Jurnal Law Review*. 3 (1), 72

²⁸Putri Handayani Nurdin, (July, 2019), Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik. *JALREV* 1 (2), 146

Furthermore, PERPPU Number 6 of 1964 was stipulated as Law Number 17 of 1965 concerning the BPK with various considerations related to the position, membership, duties, and authorities of the BPK. In this law, the BPK has again changed the number and composition of its members, wherein the law the number of BPK members has increased to 21 consisting of party representatives, representatives of the armed forces, as well as representatives of organizations during the revolution or people who have the support of an organized community appointed by the President.²⁹

The existence of Law Number 17 of 1965 concerning the State Audit Board (BPK) placed the BPK under the President. Where the report on the results of the audit is no longer only submitted to the DPR. However, it must also be sent to the president. In short, at the end of the old order, although it still had a wide scope of duties, the position of the BPK was no longer equal to the DPR and the President.³⁰ The position of BPK under the constitutional mandate as a state institution to audit state finances needs to be strengthened, accompanied by strengthening its role and performance. Independence and freedom from dependence on the government in terms of institutions, audits, and reporting are very much needed by the BPK to carry out the duties mandated by the 1945 Constitution.³¹

The position of the BPK office was still changing. In 1965 by the chairman of the BPK Sri Sultan Hamengkubuwono IX, the BPK office was partially moved to Jakarta. In 1969 the BPK office moved to Budi Utomo Street, Jakarta. Then, due to inadequate capacity, in 1971 BPK had offices on the 8th to 10th floors of the DPR RI building in Senayan, Jakarta. It was only in 1979 that BPK occupied its building at Gatot Subroto Street 31 Jakarta. However, since the G30S incident, BPK's activities have stopped.³²

5. New order Era

BPK resumed operations in 1966. In 1966 the functions and roles of BPK were slowly rebuilt. At the beginning of the New Order, the MPRS (Provisional People's Consultative Assembly) issued Decree Number X/MPRS/1966 concerning the Position of All-State Institutions at the Central and Regional levels which stipulates the return of the BPK's position to its original position and function as a State High Institution. Thus, the law that underlies the duties of the BPK RI needs to be amended and only realized with the issuance of Law Number 5 of 1973 concerning BPK. This Law consists of 10 Chapters with 22 Articles. The stipulation regarding this new law is because the previous law is no longer under the spirit of the 1945 Constitution.

²⁹Lihat Undang-Undang No. 17 Tahun 1965 Tentang BPK

³⁰ BPK RI. *Laporan Tahunan 2012*. (Jakarta: BPK, 2012), 11

³¹ *Ibid*

³²Adrian Sutedi. *Hukum Keuangan Negara*. (Jakarta: Sinar Grafika, 2010), 55.

In connection with the performance of its duties, BPK has the authority to request information that must be provided by every person, government agency/institution, or private entity, as long as it does not conflict with the law. Then regarding the membership of the BPK as regulated in this latest law, the number of members has changed again, wherein the previous law there were 21 people, but in this law, it only consists of 7 people, namely the chairman and vice-chairman concurrently members as well as 5 other members.³³

If observed in article 2 of Law Number 5 of 1973 arises the impression that the target of the audit is only limited to the implementation of the APBN (State Revenues and Expenditures Budget). The contents of the explanation of article 2 paragraphs (1), (2), and (3) are as follows: audits carried out on the accountability of state finances, including among others the implementation of the APBN (both routine and development budgets), APBD (Regional Revenues and Expenditures Budget), as well as the budgets of state-owned companies, in essence, all state assets are an audit of the things that have been done and the accountability have been prepared.³⁴

Furthermore, the explanation in Article 23 paragraph (5) emphasizes that the way the government uses the spending money that has been approved by the DPR must be commensurate with the decision. To audit the government's responsibility, it is necessary to have an agency that is independent of the influence and power of the government. An agency that is subject to the government cannot carry out such heavy-duty. On the other hand, it is not an agency that stands above the government. Therefore, the powers and obligations of the agency are determined by law. From this description, it is clear that BPK has a position, not above the government, but also not under the influence of the government. As an audit agency, this institution can be seen as an instrument of people's power in determining their destiny through the determination and approval of the APBN given by the DPR as a reference for the government to work in serving the needs of the people. Therefore, the results of the financial audit must be notified to the DPR for proper follow-up in the context of the supervisory function of the government performance.³⁵

However, the existence of Law Number 5 of 1973 as in place of Law reduced the authority of the BPK. It can be said that although in a more independent position, BPK has not been able to be empowered optimally. BPK is not free to audit all government agencies. Financial audits of institutions such as Pertamina, BUMN, Bank Indonesia, and other state-owned banks cannot be carried out optimally, because data access is so limited. It is not only reports that can no longer be widely published to the public, even the preparation of reports used must be adjusted. As with other state institutions, including the parliament, the independence mandated by Law Number 5 of 1973 turned out to be

³³Lihat Undang-Undang No. 5 Tahun 1973 Tentang BPK

³⁴Baharuddin Aritonang, *Op.Cit.*, 33-34.

³⁵Mahkamah Konstitusi RI.*Op. Cit.*, 33-34.

subject to political power, in this case, the domination of executive power.³⁶ With these conditions, it is not surprising that the BPK report during the New Order era was relatively unable to become a source of information or early detection of the state's financial condition. As a result, decision-makers also did not have complete materials to anticipate various situations, including the 1997-1998 monetary crises.

6. Reformation Era - Present

A new era shrouded in the spirit of reform has finally begun. This hopeful period was marked by the fall of President Suharto, who had ruled for 32 years. The constitutional changes made in the current reform era have changed our political system and government. Our political system has shifted from the authoritarian New Order system to democracy.³⁷ In the Reformation Era, this provided fresh air for efforts to put BPK back into the role and position that the founders of this nation aspired to. This spirit of change arises from decades of experience in state administration when the government was too powerful to render state institutions powerless. The fall of the New Order regime naturally created great awareness and enthusiasm for upholding good governance. The transition from an authoritarian and closed system of government to an open and democratic one is accompanied by a wave of change from a closed economic system to an open market system.³⁸

The change of government period from the Old Order to the Reformation Era created several changes, including in the management of state financial accountability. The implementation of democracy also brings with it demands transparency and accountability of state finances. Based on this, several laws and regulations were made and/or perfected to create orderly and good management of state finances.³⁹ This is where BPK found a way to regain its position and role as it should be. The basis of BPK in carrying out its constitutional duties has become more solid after the Third Amendment to the Constitution which proclaimed the restoration of BPK's independence. In the initial discussion of these amendments in 1999, factions in the MPR reassessed all existing state institutions. The existence of state institutions whose existence was considered not under the times began to be sued. State institutions that were considered important but whose role was weak must be strengthened, including the BPK.⁴⁰

One of the efforts to strengthen BPK is to regulate its existence, duties, and authorities in

³⁶ BPK RI. Laporan Tahunan 2012. *Op. Cit.*, hlm. 12

³⁷*Ibid*

³⁸BPK RI. *Menunaikan Amanat Konstitusi*. (Jakarta: Biro Humas dan Kerjasama Internasional BPK RI, 2010), 12-13.

³⁹Cahyo Anggoro. (2018) *Kewenangan Pemeriksaan BPK atas BUMN*. *Varia Justicia*. 14 (1), 41.

⁴⁰*Ibid*, 17

a separate chapter. In the 1945 Constitution, before it was amended, the existence, duties, and authorities of the BPK were described in one paragraph, namely paragraph (5) of Article 23, Chapter VIII on financial matters. In the 1945 Constitution after the amendment to the BPK, it is regulated in Article 23E, Article 23F, and Article 23G. This amendment confirms the authority of the BPK and the membership of the BPK. Where it is explained in Article 23E that all results of the audit carried out by BPK must be submitted to the DPR, DPD, and DPRD for follow-up, and BPK is domiciled in the State Capital and has representatives in each province.

Furthermore, the elaboration of provisions regarding the position of the BPK has become more stable and perfected with the issuance of a new law that is in line with the mandate of Article 2G paragraph 2 of the 1945 Constitution. The package of laws on state finances begins with the establishment of Law Number 17 of 2003 concerning State Finance and Law Number 1 of 2004 concerning the State Treasury. The substance of these two laws was previously regulated in the *Indische Comptabiliteitswet* (ICW).⁴¹ Furthermore, Law Number 15 of 2004 concerning Audit of State Finance Management and Accountability. The establishment of this law is intended as an adequate operational basis in carrying out the duties of the BPK to audit the management and accountability of state finances.⁴² Then to further strengthen and complete the previous law, it is hereby drafted and enacted Law Number 15 of 2006. The enactment of this law is the completion of Law Number 5 of 1973 concerning the BPK, and at the same time to implement Law Number 16 of 2004 concerning Audit of State Finance Management and Accountability.

The number of BPK membership as regulated in the law has changed again wherein the previous law there were only 7 members of the BPK, while in the latest law the BPK has 9 members who are elected by the DPR taking into account the considerations of the DPD and inaugurated by the President. The duties and authorities of the BPK as regulated in this law have undergone many changes. Furthermore, the BPK's authority as regulated in this law is also becoming clearer as described in Article 9 of Law Number 15 of 2006.⁴³

With several amendments to the BPK law, the BPK's independence has been formally restored. More importantly, of course, BPK is getting closer to the expectations of the nation's founders, who desired a BPK as an inseparable part of the enforcement of Clean Governance and Good Governance. The Reformation Era, with the changes to the Constitution that it brought, restored BPK's independence formally. This restoration opened the door for a more professional and dignified relationship between the BPK and the three elements of government power, namely the legislature, executive, and

⁴¹Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI. *Laporan Akhir Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perubahan atas Undang-Undang No. 15 Tahun 2006 tentang BPK*. (Jakarta: Kementerian Hukum dan HAM RI, 2018), 37.

⁴²Lihat Undang-Undang No. 15 Tahun 2004 Tentang Pengelolaan Tanggungjawab Keuangan Negara

⁴³Lihat Undang-Undang No. 15 Tahun 2006 Tentang BPK

judiciary.⁴⁴

The independence of BPK is now closer to the independence desired by the *Lima* Declaration, the result of the IX INTOSAI Congress (world BPK organization). The independence expected by the *Lima* Declaration is also reflected in the independence of personnel in decision-making, in finance and, the budget. This is in very contrast to the BPK's position in the past authoritarian political system. In the past, the government-controlled BPK, not only through its organization, personnel, and budget. Efforts that can be made for this are to bring legal decisions closer to the sense of justice experienced by the community so that the implementation of the law creates more order in the community itself.⁴⁵

The underlying reason why the regulations related to the BPK are increasingly being updated and strengthened is that financial management is very important to realize the principles of clean government, as well as to balance the position of state institutions, which in this case showed that the function of financial supervision by the BPK is different from supervisory function carried out by other institutions or agencies. Because basically in the DPR there is a function which states that the DPR has a budgeting function, where this function is also included in the supervision of state finances but this is based on political interests, this is what distinguishes the function of state financial supervision in the DPR and BPK, because BPK is an institution that is free and independent in carrying out its duties and authorities under Article 23E paragraph (1). In short, BPK in this reform era has become closer to the expectations of the founding fathers of the nation. That is to become a free, independent, and professional financial audit institution. Of course, as an inseparable part of efforts to form a clean government as well as good and clean governance.

3. CLOSING

Conclusion

1. The importance of regulation related to financial and the State Audit Board has been realized by the nation's founders since the beginning of independence. At the beginning of the establishment of the State Audit Board, this institution still used the laws and regulations of the Dutch East Indies which became the legal basis for carrying out the duties of the *Algemeene Rekenkame*, namely ICW and IAR. However, as the process of governance in Indonesia progresses, the government also designs and establishes regulations related to the State Audit Board. The more updated and

⁴⁴Ikhwan Fahrojih dan Moh. Najih. *Peran DPR dan BPK Dalam Reformasi Keuangan Neagara*. Jakarta: In-Trans Publik, 2012), 24

⁴⁵Ibrahim Ahmad, (2010), Prinsip Keadilan Dalam Penyelesaian Sengketa Untuk Kepentingan Pembangunan. *Jurnal Legalilas*. 3 (2), 21

strengthened regulations related to the BPK were because the management of state finances is very important and is the most basic thing in realizing a clean government.

Suggestion

The government should also expand and provide full support to BPK to make policy regulations that support the optimization of BPK's role as an independent institution so that BPK has more flexibility and authority to be able to realize its control function.

References

Book:

- An handrawulan. *Hukum Perusahaan Multinasional, Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*. Bandung: CV. Pustaka Media, 2011
- Alfin Sulaiman. *Keuangan Negara Pada BUMN Dalam Perspektif Ilmu Hukum*. Bandung: PT. Alumni, 2013
- Adrian Sutedi. *Hukum Keuangan Negara*. Jakarta: Sinar Grafika, 2010
- Badan Pemeriksa Keuang RI. *Mengenal Lebih Dekat BPK*. Jakarta: Biro Humas dan Kerja Sama Internasional Badan Pemeriksa Keuangan RI, 2019
- BPK RI. *Laporan Tahunan 2012*. Jakarta: Badan Pemeriksa Keuangan, 2012.
- BPK RI. *Menunaikan Amanat Konstitusi*. Jakarta: Biro Humas dan Kerjasama Internasional Badan Pemeriksa Keuangan Republik Indonesia, 2010
- Baharuddin Aritonang. *BPK dalam Sistem Ketatanegaraan*. Jakarta: Kepustakaan Populer Gramedia. 2017.
- Hendra Karianga. *Politik Hukum Dalam Pengelolaan Keuangan Daerah*. Jakarta: PT. Kencana, 2013.
- Mahkamah Konstitusi RI. *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010
- Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan Kesembilan. Jakarta: Prenada Media Group, 2014
- R.Soeprapto. *Kritisi Reformasi, Kembali Ke UUD 1945*. Jakarta: Taman Pustaka, 2010
- Sahya Anggara. *Administrasi Keuangan Negara*. Bandung: CV. Pustaka Setia, 2016.

Saafroedin Bahar dkk. *Risalah Sidang Badan Penyelidik Usaha-Usaha Kemerdekaan Indonesia, Panitia Persiapan Kemerdekaan*. Jakarta: PT.Citra Lamtoro Gung Persada, 1995

Wahyu Djaja. *Republik Indonesia Serikat*. Klaten: Cempaka Putih, 2018

Articles:

Agung Gumilang Saragih, Skripsi: *Kepastian Hukum Relasi Kewenangan Badan Pemeriksa Keuangan dan Badan Pengawas Keuangan dan Badan Pembangunan dalam Menentukan Kerugian Keuangan Negara*. Sumut: Universitas Muhamadiyah Sumatera Utara. (2019).

Ahmad, Ahmad, and Novendri M. Nggilu. "Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution." *Jurnal Konstitusi* 16.4 (2020): 785-808.

Ahmad, Ahmad. "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945." *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 5.2 (2021)

Ahmad, Ibrahim, *Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan*. Jurnal Legalilas 3 No. 2, (2010).

Beni Kurnia Ilahi dan Muhammad Ikhsan Alia, *Pertanggungjawaban Pengelolaan Keuangan Negara Melalui Kerja Sama BPK dan KPK*. Jurnal Integritas. 3 No. 2. (2017): 37-78

Cahyo Anggoro. 2018. *Kewenangan Pemeriksaan Badan Pemeriksa Keuangan atas Badan Usaha Milik Negara*. Varia Justicia. 14 No. 1 (2018): 40-50

Cora Elly Noviati, *Demokrasi dan Sistem Pemerintahan*. Jurnal Konstitusi. 10 No. 2 (2016): 333-354.

Elfrida Ratnawati, *The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia*, Jurnal Law Review . 3 No. 1 (2021): 72-92

Fitria Andalus Handayani dan Mohamad Ichsana Nur, *Implementasi Good and Clean Governance di Indonesia*. Jurnal Pemikiran Administrasi Negara. 11 No.1 (2019), 1-11

Hapsoro, Fakhris Lutfianto, *Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution*. Jurnal Law Review 2 No. 2 July (2020): 139-160.

Wantu, Fence M. "Mekanisme Koordinasi dan Singkronisasi Lembaga Kementerian Negara: Suatu Praksis Menuju Kabinet Yang Efektif." *Al Ahkam* 15.2 (2019): 76.

